IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

Crl.MC.No. 4429 of 2002()

CC.65/2000 of CHIEF JUDITIAL MAGISTRATE COURT, THALASSERY
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PETITIONER: ACCUSED NO.2

M/S.HINDUSTAN LEVER LIMITED,165/166, BACKBAY RECLAMATION,MUMBAI-400 020,.REPRESENTED BY ITS REGIONAL SALES MANGER MR.VINOD NAMBIAR.

BY ADV. SRI.N.A.MURALEEDHARAN
SRI.M.T.SURESHKUMAR

RESPONDENTS: COMPLAINANT AND STATE
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1. **THE FOODINSPECTOR,THALASSERY CIRCLE, THALASSERY**

2. **STATE OF KERALA,REPRESENTED BY THE PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.M.C NO.4429/2002

ORDER ON CRL.MP. NO.2956/2002 IN CRL.MC.No 4429/2002

DISMISSED

26.10.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

CRL.M.C.NO. 4429 OF 2002

DATED THIS THE 26TH OCTOBER 2007

ORDER

The petitioner is the 2nd accused in C.C.No.65/2000 in the file of the Chief Judicial Magistrate, Thalassery who has been implicated on the basis of the label on the container of skimmed milk powder that was manufactured by the petitioner. The offence alleged under Sections 16(1) a(i) read with Section 2(ia)(a) and (m) and 7(i) of the prevention of Food Adulteration Act 1954 as amended upto date and Rule 5 para A.1102.15 of Appendix-B of P.F.A.Rules 1955. He has also produced copy of the complaint filed by the Food Inspector wherein it can be seen that A2, the manufacturer and A3, the nominee have been implicated only on the basis of the label declaration . It is pointed out that there are no documents attached to the complaint that can implicate the petitioner herein. It is pointed out that vide proviso to Section 14 of the P.F.A. Act only bill, cash memorandum or invoice in respect of the sale of any article of food given by manufacturer can constitute warranty or evidence as to the sale by the manufacturer. The counsel has relied on the decision reported in **G. Lakshmanan and another v. State, (1998 (2)**

P.F.A. Cases 23) wherein the court has rejected the contention that the fact that Form No.6 and notice under Section 13(2) was served upon the petitioner/manufacturer is sufficient. It was specifically held that in the absence of material in the form of a statement from the dealer, or purchase bill under Section 14 A of the Act, the Food Inspector cannot come to a conclusion that the company alone is the manufacturer. The Supreme Court in **Murlidhar Shyamlal and Another v. State of Assam (1996 SCC(Cri.)485)** has held that the label alone is not sufficient to implicate the manufacturer and that it must be specifically held therein that the article of food sold was of the same nature and quality which it purports to be in the label. It was also held that the evidence given by the witness in the witness box that the article was of the same quality as was sold by him would not be sufficient in the absence of a cash memorandum etc. produced before the court.

2. I find that in the instant case the bill produced is with respect to the purchase by the vendor from the distributor and the only evidence against the petitioner herein is the label which would show the name etc. of the manufacturer. In the absence of any materials to show that the articles were purchased by the distributor from the particular manufacturer, I find that no purpose would be served by

further proceeding with the matter against the petitioner herein. At a later stage, if accused No.1, the vendor or the licencee or the prosecuting agency produce the relevant records in the matter to establish that it is the petitioner company that has produced the food article, that is, skimmed milk powder, the petitioner can be impleaded. Hence, the proceedings initiated against the 2nd accused in C.C.No.65/2000 in the court of the Chief Judicial Magistrate, Thalassery is herewith quashed. In the circumstances, the 3rd accused also will be entitled for the same relief as provided herein.

The criminal miscellaneous case is allowed.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRLM.C.NO. 4429 OF 2002

ORDER

26-10-2007